

**U S Army Corps  
of Engineers**  
Huntington District

# Public Notice

In reply refer to Public Notice No.

**200300397**

Issuance Date:

**September 7, 2006**

Stream:

-UNTri Little Stillwater Creek

Closing Date:

**October 7, 2006**

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5210

**PUBLIC NOTICE:** The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

**REGULATORY PROGRAM:** Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

**SECTION 10:** The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

**SECTION 404:** The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

**TO WHOM IT MAY CONCERN:** The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act.

**APPLICANT:** Penn Ohio Coal d.b.a. Kimble Clay & Limestone  
3596 State Route 39 NW  
Dover, Ohio 44622

**LOCATION:** The project area is located in jurisdictional waters of the United States in the Little Stillwater Creek watershed. The site, identified by the applicant as the Patterson-1 site, is located in Sections 7, 8, 13 and 14 of Monroe Township, Harrison County, Ohio.

**DESCRIPTION OF PROPOSED WORK:** The applicant proposes to place fill material into waters of the United States in association with the construction of a surface coal mine operation. According to the applicant, the purpose of the project is to recover available coal reserves in the project area.

A total of 2,934 linear feet of jurisdictional stream and 0.272 acre of wetlands would be impacted by the placement of fill material in association with coal extraction, sediment pond construction and road construction. The applicant indicates the preferred mining plan would involve the removal of approximately 660,000 tons of coal from the #6A and 7 coal seams over a period of approximately five to seven years. The applicant proposes to extract coal reserves through the methods of contour and auger mining. Because of the expected timeframe necessary to remove available coal reserves, the applicant requests any issued permit for this proposal expire no earlier than December 31, 2013.

Details concerning individual streams proposed to be impacted, their quality (as assessed by the Headwater Habitat Evaluation Index (HHEI) protocol or Qualitative Habitat Evaluation Index (QHEI) protocol), and purpose of proposed impact are provided below (Table 1). Wetlands proposed to be impacted (including wetland 4, 0.22 acre, and wetland 8, 0.038 acre) have been determined to be Category 1, as assessed in accordance with the Ohio Rapid Assessment Method (ORAM) protocol.

**Table 1.** Proposed impacts to jurisdictional streams on-site in association with the Patterson-1 surface coal mine site, Harrison County, Ohio.

Stream ID	Flow	QHEI/HHEI	Impact length	MT Impact	PC Impact	RC impact
A	P	31	45'			45'
C	P	40.5	73'			73'
E	I	21	250'	250'		
F	I	55	1,430'	1,430'		
F2	I	49	234'	234'		
H	I	64	255'		255'	
J	I	44.5	279'	279'		
K	I	44	48'	48'		
M	I	52	113'		113'	
N	I	21	207'	207'		

**Stream ID:** as described in the final investigation of waters of the U.S. prepared by Bair, Goodie and Associates and verified by this office on September 28, 2005;

**Flow:** Designation of stream flow: P, Perennial; I, Intermittent;

**QHEI/HHEI:** Qualitative Habitat Evaluation Index or Headwater Habitat Evaluation Index scores as determined by Ohio Environmental Protection Agency's protocols;

**MT impact:** Stream impacts associated with removal of coal;

**PC impact:** Stream impacts associated with sediment pond construction activities; and

**RC impact:** Stream impacts associated with the road construction activities.

The entire project area encompasses a total of approximately 200 surface acres. The total existing jurisdictional waters within these limits include 10,140 linear feet of perennial stream, 6,335 linear feet of intermittent stream, 0.713 acre of wetlands and 0.31 acre of open water impoundment. Each of these waters was determined to exhibit a hydrologic connection to tributaries in the Little Stillwater Creek watershed. Little Stillwater Creek is a tributary of the Tuscarawas River, a Section 10 navigable water of the United States.

An additional 0.021 acre of wetlands and 0.41 acre of open water impoundment are located within the project boundaries and do not exhibit a connection to a surface tributary system. Therefore, these waters were determined to be isolated waters of the State of Ohio. While impacts to isolated waters of the State are proposed to occur, these impacts are not regulated under Section 404 of the Clean Water Act.

**MITIGATION:** Under the preferred alternative, the applicant proposes to avoid direct impacts to 2,407 linear feet of stream and 0.325 acre of jurisdictional wetlands. Other waters of the United States verified within the original project limits and described above are not within the limits of the amended permit boundaries. Impacts to waters of the United States on-site and downstream of the project area are proposed to be minimized through implementation of best management practices. Appropriate construction and use of sediment ponds, drainage control structures, diversion ditches, and other best management construction practices are proposed to minimize impacts to waters of the United States.

Compensation for proposed impacts to 2,934 linear feet of stream is proposed to occur through the restoration of 2,816 linear feet of intermittent stream and 118 linear feet of perennial stream. Natural stream channel design and establishment of upland riparian corridors along stream channels is proposed. Stream profiles, flow rates and channel dimensions of restored streams are proposed to be as similar as practicable to pre-mining stream conditions. Riparian buffer zones of 50' in width on each stream side would be established with native vegetation. Compensation for proposed impacts to 0.272 acre of wetlands is proposed to occur through the on-site construction of 0.408 acres of wetlands. No protection in perpetuity of restored waters by a conservation easement or other similar restrictive covenant has been proposed.

The applicant proposes to monitor stream and wetland mitigation for a minimum of five years. The applicant proposes to ensure streams and wetlands are characterized by QHEI/HHEI scores and ORAM scores that are at least as high as those scores that stream and wetlands received prior to impact. Vegetated riparian corridors would be monitored and the applicant proposes supplemental plantings should survivability fall below 75 percent.

A final mitigation plan prepared in accordance with Regulatory Guidance Letter 02-2 will be required for this office to evaluate whether proposed mitigation is sufficient to compensate for the loss of jurisdictional waters of the United States in association with this proposal.

**ALTERNATIVE ANALYSIS:** A total of 0.272 acre of jurisdictional wetlands would be filled as a result of the proposal. The project does not require access to or siting within the wetlands to fulfill its basic purpose and is considered a non-water dependent activity. The Section 404(b)(1) Guidelines state for non-water dependent activities, practicable alternatives that do not involve wetlands are presumed to be available unless clearly demonstrated otherwise. The applicant is required to provide an alternative analysis that must overcome the presumption prior to receiving authorization for the placement of fill material. A preliminary alternative analysis has been submitted to this office for review.

**ATTACHMENTS:** Plans of the proposed work are attached to this notice.

**WATER QUALITY CERTIFICATION:** A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain that certification from the Ohio Environmental Protection Agency.

**HISTORIC & CULTURAL RESOURCES:** The National Register of Historic Places has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the State Historic Preservation Office (SHPO) for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

**THREATENED & ENDANGERED SPECIES:** This project is located within the known or historic range of the Indiana bat (Endangered); and Bald eagle (Threatened).

Based on location, it has been determined the proposal would have no affect on the bald eagle.

Based on project location and habitat availability, this proposal has the potential to affect suitable Indiana bat habitat. A special condition of any permit issued for this proposal would require the applicant avoid suitable habitat trees to the maximum extent practicable. Should the applicant propose to clear suitable habitat trees, it would be required they are not cleared during the designated summer roosting period of April 15 to September 15. Based on the applicant's compliance with these conditions, it has been determined the proposal is not likely to adversely affect the Indiana bat.

This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have whether any listed or proposed to be listed endangered or threatened species may be present in the area that would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

**PUBLIC INTEREST:** Any person who has an interest, which may be adversely affected by the issuance of a permit, may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

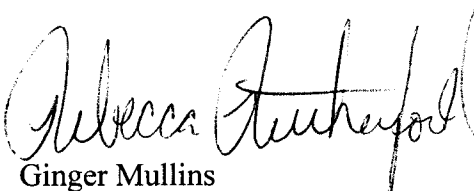
Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

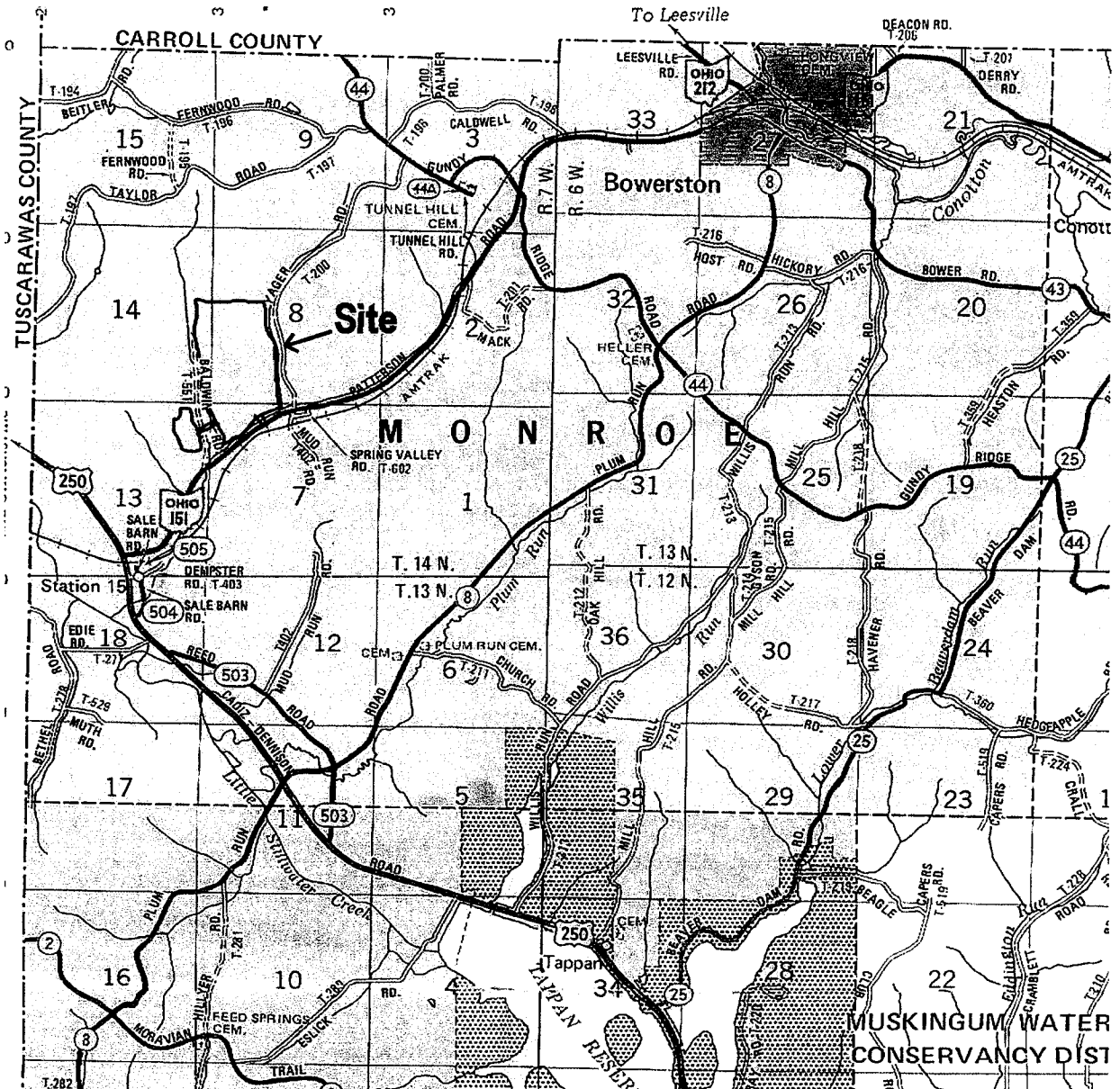
**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

U.S. Army Corps of Engineers  
ATTN: CELRH-OR-F Public Notice No. 200300397  
502 8<sup>th</sup> Street  
Huntington, West Virginia 25701-2070

Please note, the names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Ms. Desiree L. Hann of the North Regulatory Section at 304-399-5210.

  
for Ginger Mullins  
Chief, Regulatory Branch

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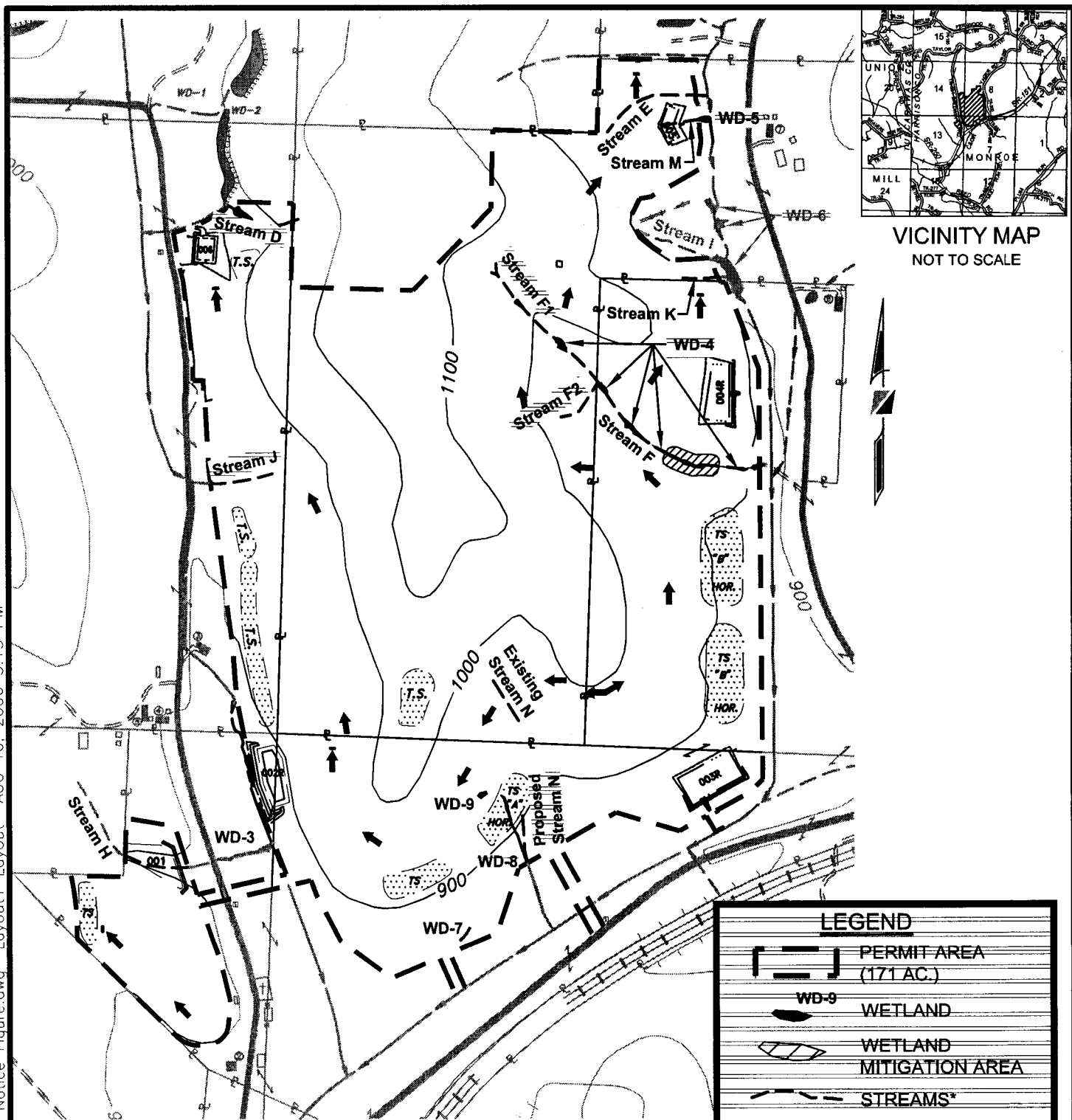


## Penn Ohio Coal Company Patterson Surface Coal Mine

Sections 7, 8, 13 and 14  
Monroe Township, Harrison County, Ohio

Site Location Map  
Scale 1" = 1Mile

Penn Ohio Coal dba Kimble Clay & Limestone  
200300397 – UNtrib Stillwater Creek  
Harrison County, Ohio  
Location Map  
Sheet 1 of 5



VICINITY MAP  
NOT TO SCALE

LOCATION OF EXISTING AND RECONSTRUCTED  
WETLANDS AND STREAMS WITHIN THE  
PROPOSED PATTERSON-1 MINE SITE,  
HARRISON COUNTY, OHIO

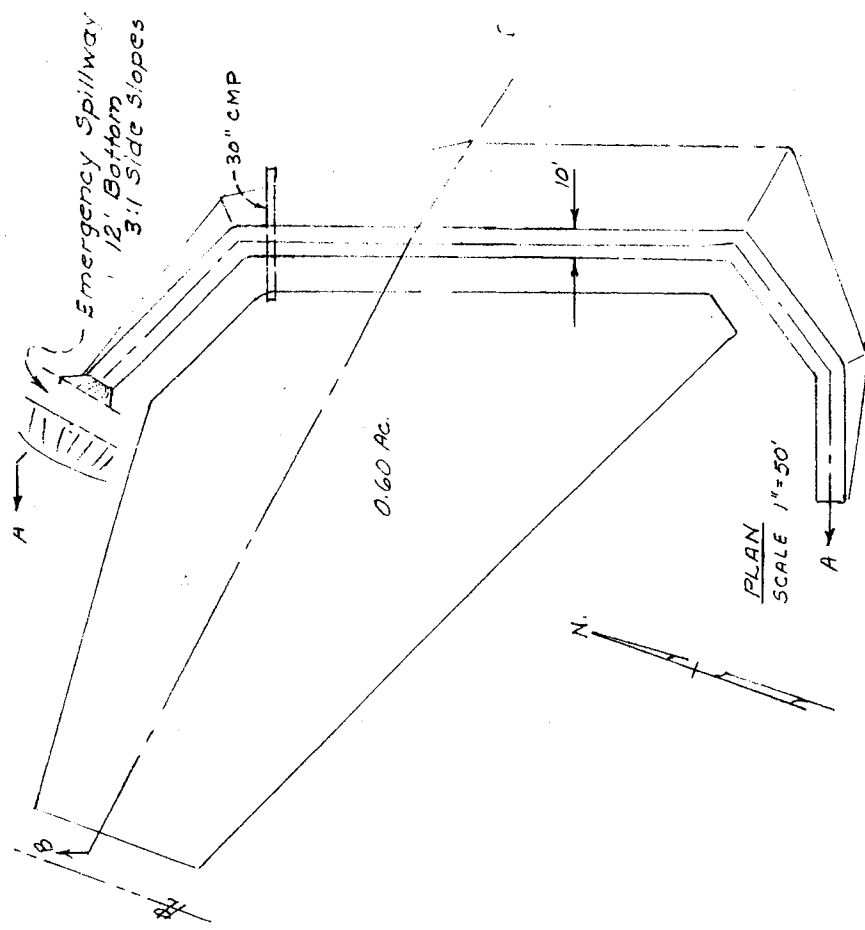
LEGEND	
	PERMIT AREA (171 AC.)
	WD-9 WETLAND
	WETLAND MITIGATION AREA
	STREAMS*
	DIRECTION OF MINING
	TOP SOIL STORAGE
	SEDIMENT POND

\* Streams will be reconstructed in the  
same location as existing streams,  
except for Stream N

**R.D.Zande**  
& Associates

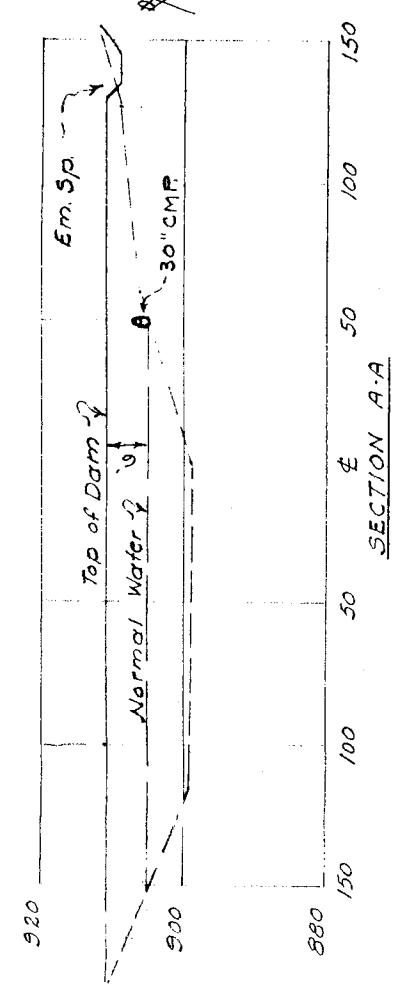
Penn Ohio Coal dba Kimble Clay & Limestone  
200300397 – UNTriB Stillwater Creek  
Harrison County, Ohio  
Plan view of proposed mining activity  
Sheet 2 of 5



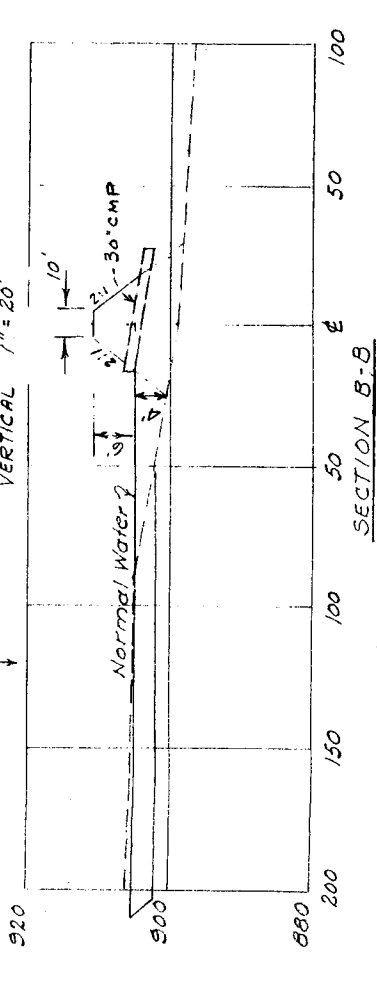


PLAN & CROSS SECTIONS FOR  
SEDIMENT POND #001 FOR

Penn Ohio Coal dba Kimble Clay & Limestone  
200300397 - UN Trib Stillwater Creek  
Harrison County, Ohio  
Cross-section of proposed pond 001  
Sheet 3 of 5

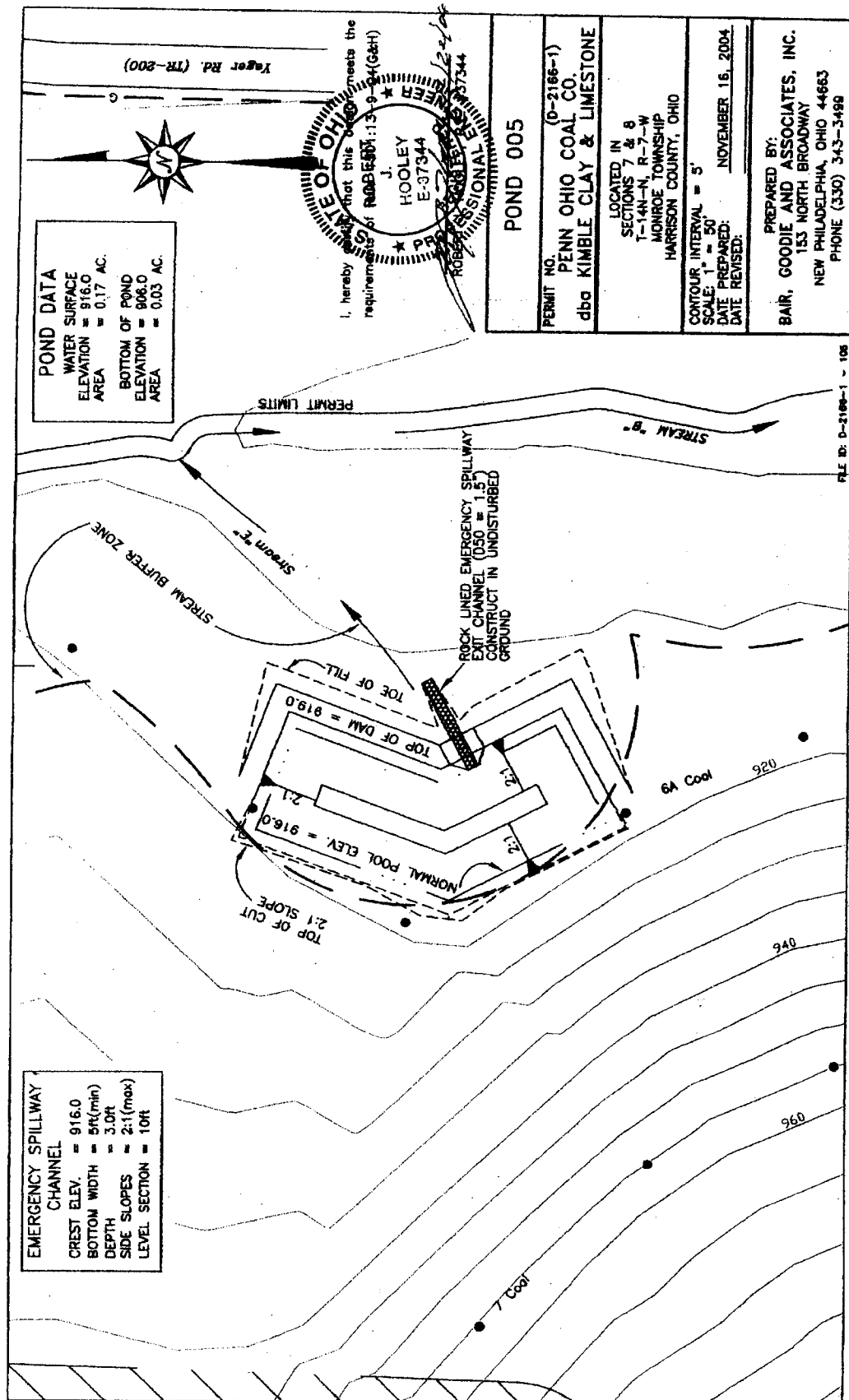


SECTION A-A  
SCALE - HORIZONTAL 1" = 50'  
VERTICAL 1" = 20'

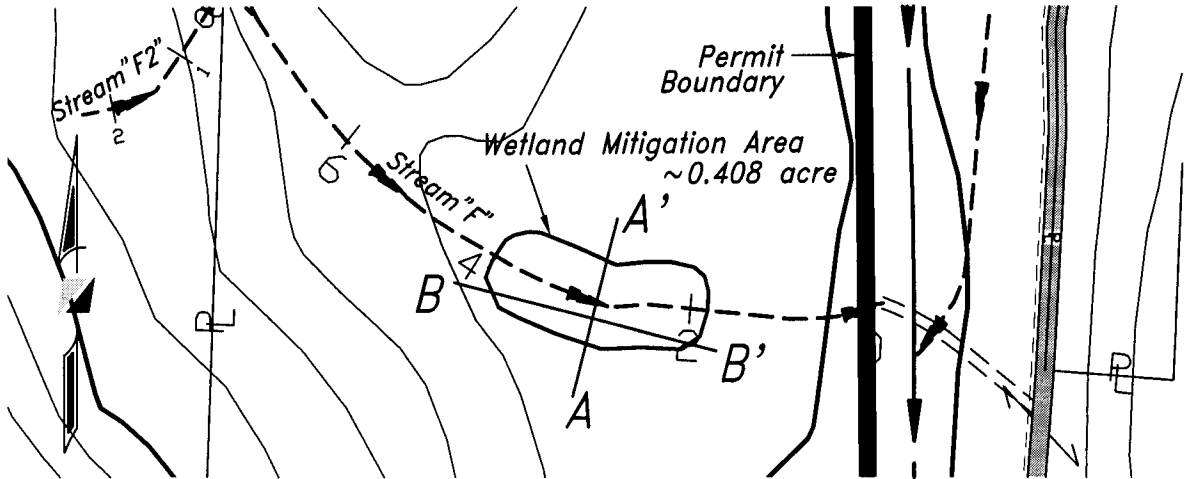


SECTION B-B

I hereby certify that this design meets  
the requirements of Rule 1501:13-9-04 (G)  
of the Ohio Administrative Code.

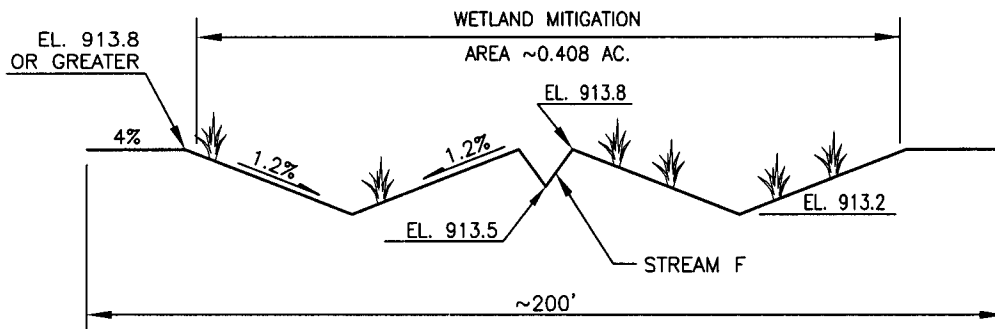


Penn Ohio Coal dba Kimble Clay & Limestone  
 200300397 - UNtrib Stillwater Creek  
 Harrison County, Ohio  
 Cross-section of proposed pond 005  
 Sheet 4 of 5



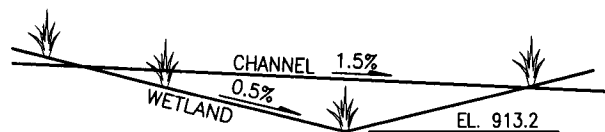
### PLAN VIEW

SCALE: 1"=200'



### SECTION A-A'

NOT TO SCALE



### SECTION B-B'

NOT TO SCALE

**R. D. Zande  
& Associates**



DETAIL OF THE WETLAND MITIGATION AREA  
WITHIN THE PROPOSED PATTERSON-1 MINE  
SITE, HARRISON COUNTY, OHIO

Penn Ohio Coal dba Kimble Clay & Limestone  
200300397 – UNTriB Stillwater Creek  
Harrison County, Ohio  
Cross-section of proposed wetland mitigation site  
Sheet 5 of 5